MISCELLANY.

Doctors as Expert Witnesses.—In a case heard by Judge Smyly at the Shoreditch County Court on December 9, a hospital doctor, who went into the box, declined to give expert evidence without a special fee. Mr. Martin O'Connor: The position is this, your Honour. We paid him a guinea fee, but he refuses to give expert evidence under 2l. 2s. Judge Smyly: I do not know what is actually allowed by the Court, but it seems a perfectly reasonable fee; it costs a big sum to become a doctor. Mr. O'Connor: This same question is continuously arising among doctors, who decline to speak of anything except fact. Judge Smyly: That is quite reasonable. If an expert, I suppose he is entitled to an expert's fee, otherwise he only speaks as to facts that occurred in the hospital. Mr. O'Connor: It is a most interesting point. Judge Smyly: Oh, the doctor is right. No further fee being forthcoming, the doctor gave evidence as to fact only.—London Law Journal.

The Jury System Inadequate.—In the current issue of Bench and Bar, Henry M. Earle denies the common assumption that an honest and well-intentioned jury always does what it is expected to do or acts in accordance with the established rules. Careful inquiries addressed by himself to jurors after they have decided cases in which he was interested have revealed that while they usually take a commendable pride in meeting the responsibilities of their position to the best of their knowledge and ability, comparatively few of them realize that their only concern is with the facts in the case as revealed by the testimony. Frequently, he says, it was discovered that the jurors infringed upon the province of the judge, rendering decisions based on supposed principles of equity, or even of charity, and occasionally the court's charge as to the law was admittedly ignored, on the theory that it merely followed a meaningless formality.

Comparatively few jurors, Mr. Earle thinks, are able to forget testimony given and stricken from the record as inadmissible. Evidently considering it useless to propose any fundamental reform of the jury system, such as that of intrusting judgment of the facts to permanent bodies of trained men, he only suggests a more careful instruction of every jury as to the limitation of its powers and the exact nature of its duties. He would have the men drawn for this service supplied by the commissioner of jurors or county clerk, with printed instructions carefully pointing out to them the difference between their task and that of judges, and explaining the fundamental rules of evidence that bear upon their utilization of it. That something could be thus accomplished is probable, but the jury system is

in need of larger reforms than can possibly be brought about by any study of printed instructions which jurymen are likely to make.

Trial by jury is, of course, a noble, a venerable, an almost sacred institution, but its beautiful adaptation to conditions long since passed away never to return is the source of all its present ineptitudes, inadequacies, and absurdities. Bench and Bar itself suggests that real reform lies in presenting to the jurors only definitely formulated questions of fact, to be as definitely answered, and in making the foreman a chairman, with power to direct and control the discussion of the evidence. That, too, might work improvement in the system, but it would still remain true that the average juryman, especially in civil cases, is often confronted with problems for the solution of which he has little or no real competency.—New York Times.

The Law of the Air.—The rapid development of aerial navigation, in the proper sense—that is, the use of the air for movement in a predetermined direction—is already giving rise to speculation and suggestion as to the necessity of laws governing this novel and, at the present time, extremely hazardous, mode of locomotion, of treaties governing the passage over or into a foreign country of air ships and aeroplanes, as well as the adoption into international law of rules with reference to their use in warfare.

The most pressing questions, naturally, relate to the regulation by domestic law of the movements of these crafts over the lands of others than the navigators, the adoption of provisions for the safety of the public at large from their operation, and of provisions looking to the prevention of collisions.

From the nature of things, flying machines can not confine their movements to aerial highways above the public roads, or navigable waters, but must fly over forest, field and meadow, by the most direct route from starting point to destination. Have they the right to do so, without the consent of he owners of the soil over which they fly? At common law, the owner of land was held to own "from the center of the earth up to the sky," meaning, presumably, to the limits of the earth's atmosphere. If this expression be given a literal interpretation, every aerial voyage would involve repeated trespasses. It is hardly to be believed that courts will sanction any such literal application of the phrase, and it may be assumed that, in the absence of statutory regulation, they will hold that navigators of the air have the right to travel freely in any direction, so long as they inflict no injury on the property over which they travel or on the residents thereon.

The rapid increase in the number of flying machines makes it quite certain that unless the law prescribes a "law of the road" for the pathless medium of the atmosphere, accidents will be numerous, with

death as the almost certain consequence of a collision, to say nothing of the consequences to persons and property beneath the scene of the accident. Mr. Glen H. Curtiss, who is entitled to speak with some authority on the subject, estimates that there are already made or in the course of construction, in this country, over ten thousand flying machines. The estimate may be excessive; but certain it is that, within a very short time, there will be enough of these machines in use to lead to frequent encounters in the air, with possible injury, not only to the aviators, but to the innocent bystander—or should we say understander?—unless definite rules are adopted for the prevention of collisions. It is also true that, even without a collision, the aerial traveler may, through lack of skill, defect in his machine, or unfavorable air currents, become a source of danger to others, through the collapse of his machine or his being compelled to make a hurried landing to escape such an accident. Not a few spectators at aviation exhibitions have already been injured in this way, and similar accidents may happen elsewhere than at such exhibitions, if the aviator gets into trouble where people are assembled for any purpose or where dwelling houses are close together. The fall of a thousand pound weight from a height of even fifty feet is apt to be dangerous to persons and property below, to say nothing of a possible fall from a height of a mile or two.

If aviation is to become, as it seems certain to do, a spot with many thousands of followers, other than professional showmen competing for prizes, the safety of the public will call for the adoption of rules calculated to protect the persons and property of others from the result of accidents to the machines while in flight. No doubt the aviators themselves will, in the first instance, adopt rules for the avoidance of collisions; but ultimately the rules must be given the sanction of law. Probably a licensing system will have to be adopted, to determine the fitness of the aviator to be entrusted with the management of an instrument of such danger, similar to that recently adopted by the government of the United States for motor boats; and signalling devices, utilizing both sight and sound, will be prescribed. In short, the use of the air for purposes of travel will have to be subjected to the same kind of regulation as the use of waterways now is. Under the admiralty regulations, collisions can not occur, where vessels are aware of each other's location and have control of themselves, without disobedience of the law by some one, and there is no reason why similar regulations should not have the same result in aerial navigation. The aerial traveler has one great advantage over the sailor, in that he is not confined to one plane; but he is at a great disadvantage in being compelled to keep in swift motion, and, at the present time, at least, he is much more at the mercy of the element in which he operates.

It will be a task of no little difficulty to devise a system of regu-

lations which will prevent collisions as effectively as existing regulations prevent collisions between vessels and also prevent, or minimize, the other accidents which are likely to befall the aerial navigator, and which, so far this year, have resulted in twenty-nine deaths in this country and in Europe.—National Corporation Reporter.

IN VACATION.

"A Moment of Weakness."—The manager of the sideshow was before the bar for kidnapping.

"Yes, judge," he confessed solemnly, "in a moment of weakness I sneaked into the museum and carried the fat lady away in my arms."

"In a moment of weakness!" gasped the judge, who remembered that the fat lady tipped the scales at 550 pounds. "Great Scott, man! What would you have done in a moment of strongness?"—Chicago News.

Mr. Smith's Usual Condition.—A young New York attorney of convivial habits fell in with an old school friend who had gone on the road.

"Whenever you're in town, come up and bunk with me," he urged his friend as they separated. "No matter what old time it is. If I'm not there just go ahead and make yourself at home. I'll be sure to turn up before daybreak."

Soon after this the salesman arrived in town about midnight, and remembering his friend's invitation, sought out his boarding-house. There was only a dim light flickering in the hall, but he gave the bell a manful pull. Presently he found himself face to face with a landlady of grim and terrible aspect.

"Does Mr. Smith live here?" he faltered.

"He does," snapped the landlady. "You can bring him right in!"—Central Law Journal.